

Service Date: September 18, 1995

**DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA**

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IN THE MATTER Of the Petition of)	TRANSPORTATION DIVISION
Burlington Northern Railroad Company)	
for Authority to Discontinue Agency)	DOCKET NO. T-93.118.RR
Services at Shelby, Montana.)	ORDER NO. 6322a

FINAL ORDER

APPEARANCES

FOR THE APPLICANT:

**Jon Metropoulos, Browning, Kaleczyc, Berry & Hoven, 139 Last Chance Gulch, P.O.
Box 1697, Helena, Montana 59624**

FOR THE COMMISSION:

**Robin McHugh, Staff Attorney, 1701 Prospect Avenue, P.O. Box 202601, Helena,
Montana 59620-2601**

**Wayne Budt, Transportation Division, 1701 Prospect Avenue, P.O. Box 202601,
Helena, Montana 59620-2601**

BEFORE:

DANNY OBERG, Commissioner and Hearing Examiner

Introduction

Proposed Order No. 6322 was issued in this Docket on August 14, 1995. On exceptions BNRC contends that the second paragraph of the "Order" Section of the Proposed Order should be deleted because the Proposed Order denies BNRC's application. BNRC is correct; the second paragraph of the "Order" section of the Proposed Order has been deleted. No other exceptions were filed. With the deletion noted, the Commission adopts Proposed Order No. 6322 as its Final Order in this Docket.

BACKGROUND

1. Burlington Northern Railroad Company (BNRC or Applicant) applied to the Montana Public Service Commission (Commission) on August 19, 1993 for authority to discontinue agency services at Shelby, Montana.

2. The Commission properly noticed BNRC's application and held a public hearing on December 10, 1993 at the Conference Room, Shelby Sheriff's Office, 235 North Marias, Shelby, Montana.

Summary of Testimony

Testimony of Applicant

3. Tom Zack, BNRC's manager of Customer Service in Great Falls, testified on the operations of the Great Falls Central Agency. Mr. Zack explained that 99 percent of agency work in Shelby is currently performed from Great Falls. He said that if BNRC's application were granted the present agent in Shelby would change his title, but his duties would remain the same. He stressed that the current agent does useful work, but does not perform agency work.

4. Jim Engel, BNRC trainmaster in Shelby, testified on the manner in which he works with the Great Falls agency. He opined that a grant of the application would not change customer service in Shelby since the great majority of the present agent's work is with train operations, not with customer service.

5. Paul Froelich, senior cost analyst at BNRC, testified on BNRC's accounting exhibits supporting its application.

Testimony of Public Witnesses

6. James Mular, State Legislative Director for the Transportation Communications International Union (TCU) testified on behalf of the Shelby agent. He said that an agent should remain in Shelby because it is an important east-west/north-south crossroads through which a great deal of hazardous material is transported. He disagreed with BNRC's distinction between agency services and train operations, stating the two go together.

Testimony of Shipper Witnesses

7. Don Pettigrew, a Shelby beer distributor, testified that beer is shipped to Shelby by rail and that it is important that the beer is moved inside when the weather is cold. He said that there have been problems when the beer sits on a siding and is not spotted in a timely manner. If the beer comes on Friday Mr. Pettigrew testified that he can talk to the local agent and get the car spotted so it does not sit over the weekend. He said this is sometimes more efficient than contacting the Great Falls central agency. He said that problems come up two or three times a year and he stressed that he likes the ability to call someone locally. On cross-examination BNRC made the point that if this application is granted no personnel will be removed from Shelby.

8. George Jackson of Watkins Shepard Trucking (WST) testified that he uses the local agent every day. He emphasized that a quick response from BNRC is important to WST. He said WST has no problem with the service it receives now but is concerned that there might be problems without a local presence. On cross-examination Mr. Jackson conceded he told BNRC that WST had no problem with BNRC's application.

9. Gary Iverson, who runs a transload facility in Sunburst, Montana, testified that service is excellent now and he does not want to see it deteriorate. On cross-examination he



indicated that he told BNRC that he had no problem with the BNRC application and that the Great Falls central agency works well.

10. Donald Conaway, the current agent in Shelby, testified at the request of the Commission. He said he is called occasionally to get cars spotted and that it is "easier and handier for someone to be here." He said that most of the time shipper needs can be met through a central agency, but that sometimes communication can be a problem. He speculated that if authority is given to remove the agency, eventually a job will be eliminated as well.

Exhibits

11. At hearing BNRC introduced the following exhibits: BNRC #1 - Dear customer letter from BNRC introducing a questionnaire on central agency service (dated August 19, 1993); BNRC #2 - Samples of BNRC questionnaire on central agency service; BNRC #3 - Dear customer letter from BNRC indicating toll free numbers for the Great Falls Central Agency (dated July 23, 1993); BNRC #4 - letter to U.S. West from BNRC indicating a change in the toll free number (dated August 26, 1993); BNRC #5 - Customer Contact-Agency Closure form indicating contact with Wallace Westermarck, Westermarck Grain; BNRC #6 - Customer Contact-Agency Closure form indicating contact with Duane Irvin, Dick Irvin Trucking; BNRC #7 - Accounting Exhibits - amended and refiled after the hearing to include information on the Sunburst blindsiding.

12. TCU introduced three exhibits: TCU #1 - a July 28, 1992 petition from BNRC asking to establish a centralized service center at Shelby serving various blindsidings, including Sunburst; TCU #2 - PSC Order No. 4461 granting BNRC's petition; TCU #3 - a copy of a July 20, 1992 internal BNRC publication titled "Compass Points."

PROCEDURAL MATTERS

13. In its petition BNRC indicated that Sunburst, Montana is a blindsiding associated with Shelby. BNRC's accounting exhibits, however, did not include information on Sunburst. After the hearing BNRC amended its accounting exhibits to include Sunburst.

Also, BNRC amended its petition at hearing to indicate that Don Conaway is now the permanent, not acting, agent at Shelby.

DISCUSSION, FURTHER FINDINGS AND ANALYSIS

14. Under Section 69-14-202(1), MCA, a railroad operating in the state of Montana shall maintain and staff such agency facilities for shipping, freight delivery and accommodation of passengers as were maintained and staffed on January 1, 1987. However, if the railroad demonstrates to the Commission, following an opportunity for public hearing, that a facility is not required for the public convenience and necessity, then the Commission shall authorize the closure of such facility. Section 69-14-202(2), MCA. Though BNRC is only requesting to discontinue agency services in this instance, rather than close the Shelby facility, the same analysis applies.

15. In determining public convenience and necessity, the Commission must weigh and balance facts and testimony presented at the hearing including facts and testimony presented by the general public. Id. The Commission must also consider the existing burdens on the railroad, the burdens placed upon the shipping and general public if the application is granted, and any other factors the Commission considers significant to the provision of adequate rail service. Id.

16. BNRC contends it must computerize and centralize its customer service operations in order to remain competitive in the transportation marketplace. BNRC also contends that computerization and centralization will result in better service to the customer. In this regard, the various BNRC witnesses described how the central agency system functions and explained how agency services provided by a station agent can be more efficiently performed by a central agency. Generally speaking, the central agency concept involves conducting business over the telephone rather than in-person.

17. The central agency concept is not new. As a rule, the Commission has approved requests to discontinue agency services whenever shipper and public needs would not be compromised by central agency services. However, the Commission has historically denied

such requests where shipper and/or public needs required the physical presence of a station agent. See In the matter of the Application of Burlington Northern Railroad Company, Eureka Agency, Order No. 6180, Docket No. T-9911 (March 12, 1993) (application denied where railroad failed to prove a central agency could meet the particular needs of a lumber and reload company; In the Matter of the Application of Union Pacific Railroad, Silver Bow Agency, Order No. 6036a, Docket No. T-9447 (January 29, 1992) (application denied where agency was located at an interchange point and agent played unique role in serving a port authority).

18. Section 69-14-202, MCA, requires the Commission to consider any burdens that may be placed upon the general public if the application is granted. Only one witness, Mr. Mular, testified that closing the agency would be harmful to the general public. Mr. Mular reminded the Commission that the Shelby station is located at a busy rail intersection. He argued that the shipment of hazardous materials through this busy intersection requires the presence of a local agent. The Commission additionally takes administrative notice that rail traffic through Shelby is likely to increase due to the North American Free Trade Agreement. In this regard, it is important to note the volume of traffic handled at Shelby over the last few years: 1990 - 2,310 cars; 1991 - 1,742 cars; 1992 - 2,344 cars; 1993 (first six months) - 1,048 cars. These are significant numbers and indicate that Mr. Mular's concerns have some merit. The Commission finds that the absence of an agent in Shelby will place at least some burden on the general public. BN Exhibit No. 7.

19. Section 69-14-202, MCA, also requires the Commission to consider any burdens that would be placed upon the shipping public if the application were granted. This record does support a conclusion that the absence of the agent would cause some burden to the shipping public: First, the evidence demonstrates that the local agent is very helpful in certain situations and that some shippers are skeptical that the central agency can adequately substitute for the local agent. Second, in the case of Mr. Pettigrew, the absence of an agent could cause tangible economic injury.

20. In evaluating the burdens that would be placed on the railroad if the application were denied, the Commission notes that the accounting exhibit presented by BNRC shows that the Shelby Agency is profitable. Specifically, BN's profits from the Shelby station were \$386,397 in 1990, \$297,548 in 1991, \$444,571 in 1992 and \$185,374 for the first six months of 1993. BN Exhibit No. 7. Furthermore, BNRC indicated that the current agent in Shelby will continue performing his current duties, even if the Commission grants this petition. Therefore, the Commission concludes that denying this petition will place no burden on the railroad.

21. Weighing the respective burdens, as required by Section 69-14-202, MCA, the Commission finds that the most significant burden is that which would be placed upon the shipping public by removing the local agent. In addition, at least some burden would be placed on the general public by removing the agent. Therefore, the Commission finds that the agency services provided by the Shelby agent are required for the public convenience and necessity, and the application is denied.

CONCLUSIONS OF LAW

1. The Public Service Commission has jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 14, MCA.

2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter as required by Title 2, Chapter 4, MCA.

3. The services provided through the Shelby Agency are required for the public convenience and necessity. Section 69-14-202, MCA.

4. The Commission shall require employee protection before granting an application to discontinue agency services. Section 69-14-1001, MCA.

ORDER

NOW THEREFORE IT IS ORDERED that Burlington Northern Railroad Company's application to discontinue agency services at Shelby, Montana is hereby denied.

IT IS FURTHER ORDERED that all objections and motions made during the hearing in this Docket that were not ruled on are denied.

Done and Dated this 11th day of September, 1995 by a vote of 5 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

NANCY MCCAFFREE, Chair

DAVE FISHER, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision.
A motion to reconsider must be filed within ten (10) days. See ARM
38.2.4806.